

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF KINGS - CRIMINAL TERM - PART 19

3 THE PEOPLE OF THE STATE OF NEW YORK

4 -against-

INDICTMENT NO.

5 [REDACTED]
Mapp, Dunaway &
Payton Decision

6 Defendant.

7 Supreme Court
8 320 Jay Street
9 Brooklyn, New York
December 23, 2008

10 B E F O R E:

11 HONORABLE DANIEL K. CHUN,

12 Justice

13
14 A P P E A R A N C E S:

15 FOR THE PEOPLE:

16 CHARLES J. HYNES, ESQ.
District Attorney, Kings County

17 BY: WAYNE ALLEYNE, ESQ.
Assistant District Attorney

18 FOR THE DEFENDANT:

19 HAROLD BAKER, ESQ.
20 32 Court Street
Brooklyn, New York

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24 NORA LEE, RPR
25 OFFICIAL COURT REPORTER

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1 COURT CLERK: From the calendar, number one,
2 Indictment [REDACTED]

3 Counsellors, your appearances, please, for
4 the record.

5 MR. ALLEYNE: Wayne Alleyne, appearing on
6 behalf of the People. Good morning -- good afternoon,
7 your Honor.

8 THE COURT: Good morning.

9 MR. BAKER: Good morning, Judge. For
10 Mr. [REDACTED] Harold Baker, 32 Court Street,
11 Brooklyn, New York.

12 THE COURT: Good morning.

13 MR. ALLEYNE: Your Honor, while we wait for
14 the defendant to come out, I just have to apologize
15 for the delay. I was held up in Part 31. They needed
16 someone to cover me. Unfortunately, there was no one
17 to do that, so I apologize to the Court and defense
18 counsel.

19 THE COURT: I heard that, so I knew that you
20 were not just MIA somewhere else.

21 (Whereupon, the defendant was produced
22 before the Court.)

23 THE COURT: Is there anything else either
24 counsel wishes to say before the decision?

25 MR. ALLEYNE: Nothing from the People.

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1 MR. BAKER: No. Your Honor's had an
2 opportunity to review my supplemental reply
3 affirmation, so I'll rely on the arguments made in my
4 papers.

5 THE COURT: All right. Defendant may be
6 seated.

7 Mapp, Dunaway, and Payton hearings were
8 conducted before me. People called Officer Tillotson,
9 and the defense called a witness, [REDACTED].

10 The following constitutes my findings of
11 fact and conclusions of law: Officer Tillotson
12 testified that he has -- he's a police officer in
13 Anti-Crime. He's been there for about a year. He's
14 been working at the 77th Precinct for more than
15 six years.

16 On November 6th of 2007, he was working as
17 an Anti-Crime officer, along with other officers,
18 Tauby and Corroza. And although they were in
19 anti-crime, they were patrolling in uniform in an
20 unmarked car. Around 9:10 in the evening, he was on
21 Saint John's, at the vicinity of Saint John's and
22 Nostrand. He stopped the car in front of 817 Saint
23 John's, and he testified that he was the rear
24 passenger. He testified -- Officer Tillotson
25 testified that he got out in front of 817 Saint

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1 John's. He also added that he knows the building.
2 It's a problematic building, according to his
3 testimony. That there had been several arrests made
4 in the building.

5 And on the cross, it was brought out that --
6 it was testified previously that when he was asked in
7 the grand jury, that he testified in the grand jury
8 that he went to the building pursuant to a separate
9 investigation, and that was the way that, to quote
10 him, that they wanted him to answer. That he didn't
11 respond there pursuant to a 911, but that there's been
12 a lot of complaints by tenants or in the community
13 about that building.

14 He further testified on direct that he saw
15 two people inside the first door, which he said was
16 part glass, and he said there were two people talking
17 in the vestibule, and one turned towards
18 Officer Tillotson. And upon seeing Officer Tillotson,
19 threw a Ziploc containing a green leafy substance, and
20 ran into the -- further into the building.

21 Officer Tillotson testified, identified the
22 defendant as the person who threw the Ziploc and ran
23 into the building. Officer Tillotson testified that
24 when he saw this, he was either walking up the steps
25 to the five to six steps leading to this vestibule, or

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1 he was right outside the door, on the top landing. He
2 described the vestibule as about four feet by
3 four feet. And he testified that he pursued the
4 defendant, as defendant turned and opened the second
5 door. The officer picked up the Ziploc containing
6 what he believed to be marijuana. And as he did that,
7 defendant slammed the door, the second door, on the
8 officer. He was able to open that second door after
9 it slammed on him. And when he opened the door, he
10 saw defendant and the other both running away from the
11 officer further down the hallway.

12 Defendant went straight down the hallway.
13 The other went up the stairs. The officer followed
14 the defendant, running behind the defendant. And as
15 the defendant entered into an apartment and tried to
16 close the door in front of the officer, he pushed
17 against the door and he was able to push the door
18 open. He testified that the hallway he chased the
19 defendant into was about 30 feet in length.

20 And after he pushed the door open, he ran
21 after the defendant, and he -- the defendant was
22 apprehended inside the apartment, straight down the
23 hallway in a larger area. There was a struggle in
24 attempting to place him in handcuffs. And after he
25 was placed in handcuffs, there was another bag of

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1 green leafy substance in his front pocket, and in his
2 rear pants pocket, a .38 caliber loaded revolver
3 loaded with such rounds was recovered from his rear
4 pants pocket. He testified that there was no one else
5 in the apartment in that location. That's 817 Saint
6 John's.

7 On cross, it was brought out there was no
8 warrant, and there was no consent to enter the
9 building. He -- Mr. Baker also brought out that this
10 was not a city housing project but a private apartment
11 building. And that as Officer Tillotson went up the
12 stairs, that defendant was holding this bag of
13 marijuana in his right hand, but his left hand -- left
14 side was visible to the officer, and he described this
15 bag as being about one inch by one inch, small bag.
16 And he said he was about three feet away when he saw
17 the defendant holding the bag.

18 The Court specifically questioned whether --
19 what exactly Officer Tillotson saw. He stated that he
20 saw the green substance inside this bag. He was able
21 to see it in his hand, and he recognized it as being
22 likely marijuana.

23 It was also brought up on cross that the
24 second door, after it was slammed on
25 Officer Tillotson, he was able to pull it open in a

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1 second or two by a couple of tugs. He was able to
2 forcibly pull it open, and he testified that he took
3 out the flashlight as he ran down the hallway inside
4 the building or inside the apartment, but apparently
5 the flashlight was not taken out outside when he was
6 walking up the stairs.

7 [REDACTED] testified that he did some
8 work right after November 7th of '07. There was
9 damage to the door. The door was split, and he was
10 called by someone named Frank to work on the door.

11 The following constitutes my conclusions of
12 law: If an officer establishes probable cause to
13 arrest someone, it is well established that he may
14 chase that person based upon that probable cause, and
15 defendant may not withdraw into a dwelling or his
16 private apartment to stop that chain of events which
17 began with probable cause to arrest. And it applies
18 not only in serious severe cases, but it applies to
19 minor cases as well.

20 In the People's reply papers, they cite that
21 even an infraction, as drinking a beer on the street,
22 would justify a chase by officers, and if the
23 defendant in that type of situation chooses to run
24 into his home, it may justify a pursuit into the
25 person's home. Therefore, the entire probable cause

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1 depends on the testimony of Officer Tillotson and the
2 credibility of Officer Tillotson.

3 Given the fact that although it does apply
4 to minor cases as well, since it was a possession of
5 marijuana that started the whole chain of events, and
6 there's somewhat of a question whether or not this
7 vestibule is a public place. If it is a public place,
8 this observation of marijuana would make it a "B"
9 misdemeanor. If it is not a public place, rather, a
10 private vestibule, for example, if police would be
11 able to arrest someone for trespassing there, then it
12 would not be a public place. Then it would not be a
13 "B" misdemeanor, possession of marijuana, but it would
14 be a violation, a possession of marijuana.

15 Nonetheless, People have to establish that
16 Officer Tillotson had probable cause to arrest based
17 upon his observation. Given the size of this
18 particular bag of marijuana, given the time of when it
19 occurred, and upon examining the pictures that are in
20 evidence, all those factors, I believe, warrants this
21 Court to very carefully and diligently scrutinize
22 Officer Tillotson's testimony. And in doing so, I
23 find that as a matter of law, that the Court simply
24 cannot credit all of Officer Tillotson's testimony,
25 especially the part considering his observation of the

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1 bag in the defendant's hand and how he drops it and
2 how he recovers it, leading to the chase. The
3 pictures of the building indicate it's a very run-down
4 building, with small areas of glass surrounded by
5 either what appears to be wooden frames, and to say
6 that through -- while he's approaching that door, he
7 could see a very small bag held by the defendant in
8 which was green substance, in this Court's opinion,
9 stretches credibility beyond what this Court is going
10 to accept.

11 I do not credit his testimony on that
12 portion, and I find that it's highly more likely that
13 he may have thought that he saw something. Upon
14 seeing the officers, defendant and someone he was with
15 chose to run in the building, to which the officer
16 gave chase. Therefore, this Court is of the opinion
17 that the People did not establish that
18 Officer Tillotson had probable cause. It would have
19 been nearly impossible to see such a small bag unless
20 the defendant was holding it right open, in open door,
21 towards the officer. It would have been almost
22 impossible to see a bag of this size.

23 Therefore, I find that there is no probable
24 cause to attempt to arrest the defendant, and
25 therefore, there was a violation pursuant to Payton

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1 when they chased after the defendant into his
2 apartment and recovered the other bag of marijuana and
3 the guns. And therefore this Court, in not finding
4 Officer Tillotson's testimony to be credible, grants
5 defendant's motion to suppress the gun and the
6 marijuana from the person. The marijuana recovered
7 from the ground is not suppressed.

8 I'm going to adjourn for People to decide
9 whether or not People choose to appeal the Court's
10 decision or ruling. January 28th?

11 MR. ALLEYNE: That's a bad day for me, your
12 Honor. I have a trial starting.

13 THE COURT: February 4th?

14 MR. BAKER: February 4th is good, Judge.

15 I have a bail application.

16 THE COURT: February 4th works for the
17 People?

18 MR. ALLEYNE: Can I get something a little
19 later, your Honor, because --

20 THE COURT: 2/11.

21 MR. ALLEYNE: 2/11, yes, that's fine.

22 THE COURT: Mr. Baker?

23 MR. BAKER: 2/11 is good, Judge.

24 THE COURT: What was your application?

25 MR. BAKER: Judge, I'd like to have my

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1 client released in his own recognizance. Your Honor
2 has rendered a decision. We're not sure if the People
3 are going to appeal or not, but in any event, it
4 substantially changes the circumstances. And as it
5 stands right now, with the gun suppressed, the People
6 are unable to make their case of criminal possession
7 of a weapon. They're left with basically a violation,
8 possession of marijuana. So at this point that's a
9 substantial change in circumstances, which I would
10 argue warrants a reduction in bail. I think his bail
11 is presently \$10,000 cash bail. I would ask you to
12 release my client. He does have ties to the
13 community. He's got two brothers who have been in
14 touch with me. They haven't been able to make it to
15 court every day, but they are in contact with me.
16 He's got a place to stay. He's going to stay with his
17 brother.

18 What's your brother's name?

19 (Mr. Baker conferring with defendant.)

20 MR. BAKER: He's got another brother that
21 lives in Brooklyn. And he assures me that he's going
22 to come back to court every single time.

23 Since your Honor has -- the nature of your
24 Honor's decision has to do with the credibility of the
25 police officer, I don't really see on what grounds the

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1 D.A.'s going to appeal, so I don't think they're going
2 to appeal this decision. I think it's going to stand,
3 and I think the defendant should be released.

4 THE COURT: All right. This is -- I've been
5 ten years on the bench. I guess this is my second --
6 only the second case where I found the officer not
7 credible, I suppose. And I'm going to set misdemeanor
8 bail. I'm going to reduce bail to a thousand over a
9 thousand.

10 February 11th, for decision by the People
11 whether to appeal.

12 MR. BAKER: Judge, there is another issue.
13 I don't know what we can do about it, but I'm
14 concerned because my client's family can definitely
15 make that bail. But his paperwork says that there is
16 some kind of hold on him. They're not sure what it
17 is. There's been no detainer filed, and I'd like to
18 try to ascertain what the status of that is if we can
19 before we adjourn, because otherwise, he's going to be
20 able to make bail.

21 THE COURT: We're not going to be able to
22 ascertain it here. It'll come up when he attempts to
23 make bail, and then you can --

24 THE SERGEANT: Is he on parole?

25 THE DEFENDANT: No.

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(Discussion held off the record.)

THE SERGEANT: Immigration? Okay, so it's either parole or immigration.

THE COURT: All right, February 11th. Thank you.

MR. BAKER: Thank you very much, your Honor.


MR. ALLEYNE: Thank you, your Honor.

THE SERGEANT: Back here, Judge?

THE COURT: Yes, back here.

* * *

It is hereby certified that the foregoing is a true and accurate transcript of the stenographic notes of these proceedings.



NORA LEE, RPR
OFFICIAL COURT REPORTER
SUPREME COURT-KINGS COUNTY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM : PART 19

-----X
THE PEOPLE OF THE STATE OF NEW YORK

- against -

Dismissal

[REDACTED]
Defendant.

-----X
Indict. No. [REDACTED]

320 Jay Street
Brooklyn, New York
January 21, 2009

B E F O R E :

HONORABLE DANNY K. CHUN,
Justice.

A P P E A R A N C E S :

OFFICE OF CHARLES HYNES, ESQ.
DISTRICT ATTORNEY, KINGS COUNTY
Attorney for the People
BY: WAYNE ALLEYNE, ESQ.
Assistant District Attorney

HAROLD BAKER, ESQ.
Attorney for the Defendant,
32 Court Street,
Brooklyn, New York

ERIC S. POLLYEA,
Official Court Reporter

1 THE CLERK: From the calendar, number eight,
2 Indictment Number [REDACTED], the People versus [REDACTED]

3 [REDACTED]
4 Counselors, would you please state your
5 appearances for the record?

6 MR. BAKER: Harold Baker, 32 Court Street,
7 Brooklyn, New York.

8 MR. ALLEYNE: Wayne Alleyne, appearing on
9 behalf of the People.

10 THE COURT: This matter is advanced from the
11 initial date of February 11th at Mr. Baker's request.

12 MR. BAKER: Correct. The People have decided
13 not to appeal the Court's ruling in the suppression
14 hearing.

15 So I advanced the case for purposes of moving
16 to dismiss the indictment.

17 MR. ALLEYNE: That is true. People will not be
18 appealing.

19 And in the interests of justice, People move
20 to now dismiss the indictment.

21 THE COURT: People move to dismiss the
22 indictment.

23 I will excuse the defendant's appearance.
24 That application is granted. Indictment dismissed. And
25 sealed. Bail exonerated.

* * * *

It is hereby certified that the foregoing is a
true and accurate transcript of the stenographic record.

Eric S. Pollyea

ERIC S. POLLYEA,
Official Court Reporter